

# **FINAL ENVIRONMENTAL ASSESSMENT DECKER'S DRAW ALTERNATIVE LIVESTOCK OPERATION**

## **MONTANA ENVIRONMENTAL POLICY ACT (MEPA) PROCESS**

Montana Fish, Wildlife & Parks (FWP) is required to perform an environmental analysis in accordance with the Montana Environmental Policy Act (MEPA) for "each proposal for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment" (Administrative Rules of Montana [ARM] 12.2.430). FWP prepares an environmental assessment (EA) to determine whether a project would have a significant effect on the environment.

The people of Montana, through our legislature, have determined that the alternative livestock industry is appropriate in Montana. It is understood that this carries with it some risk that cannot be reduced to zero. The level of risk that a particular project may introduce must be evaluated by FWP (through the MEPA process) using legislative intent, the negotiated rules and standards therein, as well as established practices that have been demonstrated to be sufficiently effective measures for similar conditions elsewhere.

If, using the above parameters, FWP determines that a project would have a significant impact that cannot be mitigated to a minor impact, the agency will prepare a more detailed environmental impact statement (EIS) before making a decision. If the agency determines that a proposed project will not have a significant impact, or that the impact can be mitigated to minor or none, the agency may make its licensing decision based upon results of the EA and criteria established under Montana alternative livestock statute, Montana Code Annotated (MCA) Title 87, Chapter 4, Part 4.

Mitigation measures may be considered in FWP's analysis as a means to reduce impact(s) of an alternative livestock ranch to a level below significance. FWP may also recommend mitigation measures to reduce impacts that are considered minor. FWP prepared a Draft EA for the proposed Decker's Draw Alternative Livestock Operation, which identified no significant impacts from the Proposed Action that could not be mitigated. The Draft EA was released for public review and comment February 1, 2000. Public comments were accepted through February 21, 2000. A public meeting was conducted on February 18 in Kalispell, Montana.

The Draft EA also provided an analysis of impacts to private property by proposed stipulations in the EA as required under 75-1-201, MCA, and the Private Property Assessment Act, Chapter 462, Laws of Montana (1995). The analysis provided in the Draft EA was conducted in accordance with implementation guidance issued by the Montana Legislative Services Division (EQC 1996).

The Draft EA, as modified herein, and this Final EA are hereby approved as the Final EA. This Final EA for the proposed Decker's Draw Alternative Livestock Operation contains summaries of the Proposed Action, affected environment, and potential consequences of the Proposed Action, all of which are described in additional detail in the Draft EA, which is adopted in this Final EA. This document also describes mitigation measures, includes public comments, and provides the conclusion of the EA. The preferred alternative is the Proposed Action with one required stipulation and several recommended mitigation measures.

## PROPOSED ACTION

FWP received an application for an alternative livestock operation license from Donald A. Decker dated September 27, 1999, to construct a 95-acre elk facility in Flathead County. This application was accepted on November 2, 1999, initiating a 120-day review process. The proposed Decker's Draw alternative livestock facility would be located approximately 2½ miles southwest of Kila, Montana. It is located up Jackson Draw, about ½ mile upstream from Ashley Creek and the Smith Lake Waterfowl Production Area. The applicant would live adjacent to the facility year-round.

The applicant stated he would like to eventually place a maximum of 50-59 elk within a 95-acre enclosure for the purpose of breeding stock, meat production, antler production, trophy sales, and other uses. The commercial shooting of elk would not occur. During a site visit by FWP on 11/12/99, the applicant stated he would like to make a number of clarifications and corrections to the application. Most importantly, he would like to construct the facility in 3 phases over several years. Construction of Phase I would begin this winter and would involve approximately 15 acres near his residence. Phase II would begin in 2000 or 2001 and would involve approximately 15 acres across a public access road from his residence. If Phases I and II prove profitable, the applicant stated he would like to construct Phase III in 4-5 years. Upon completion, it would enclose approximately 50 acres adjacent to Phase I. However, Montana statute (ARM 12.6.1522(5)) states that all construction must be completed within 3 years of acceptance of the application. The number of elk present within the enclosure would be dependent upon the phase of construction completed. The applicant indicated verbally on 11/12/99 that Phase I would involve fewer than 15 animals. Phase II may involve an additional 15 animals. If all 3 phases are constructed, a total of 59 animals may be possible. All phases of construction are addressed in this single EA.

Total acreage to be enclosed would be approximately 80 acres, rather than the 95 acres specified in the application. This reduction in acreage is due to the deletion of areas with steep terrain, deletion of the area around his residence, the deletion of a powerline corridor along one side of his property, and the establishment of a buffer around the perimeter. This buffer against adjacent landowners will vary in width from 100-300 feet depending on terrain.

Fence construction would be completed in accordance with requirements of FWP under ARM 12.6.1533. The exterior fence for the enclosures would consist of 8-foot high Tightlock steel fencing. Fence height on steeper slopes would be a minimum of 10 feet where slopes are 50 percent grade or 30 degrees or greater. A handling facility would be constructed according to DoL standards approximately 100 yards from the residence. Water for the elk would be provided via a domestic well; no streams or other sources of water are available. Supplemental feeding would be kept to a minimum, with some oats being provided on a year-round basis.

The proposed facility would have several interior fences, especially within the area identified for Phase I. Phase I would have two exterior gates, Phase II would have one exterior gate, and Phase III would have two exterior gates. In order to move elk across the roadway between the Phase I and II areas, the applicant is proposing to install large, double, swinging gates on either side of the roadway that would form a connecting corridor across the road when opened. Each of the double, swinging gates will have to be at least 15 feet long in order to span the 30-foot roadway. Besides the applicant and his family, only one other family currently uses the privately owned road for access.

The habitat for the proposed project area is primarily forested, with scattered grasslands on a southerly slope of gentle to moderate steepness. Tree species are primarily Douglas fir, with Ponderosa pine and western larch interspersed. Timber harvesting has been the main economic use of the area. Average maximum tree height throughout the project area is 50-70 feet. Some thinning of trees within the project area has recently occurred. The applicant has expressed plans to personally conduct additional thinning operations in the future.

The understory within the proposed project area is currently comprised primarily of various bunchgrasses and Pinegrass (*Calamagrostis* spp.) With the exception of Snowberry (*Symphoricarpos albus*), few shrubs are present. In accordance with Montana's Open Range Law, some cattle grazing within the project area currently occurs.

Residences in the area are new and scattered. Only 2-3 residences currently occur within 300 yards of the proposed project area. Plum Creek Timber Company, Inc., is the largest adjacent landowner. The extent of future subdividing is unknown, but not expected to be great.

White-tailed deer and elk currently use the area on a year-round basis. Use by these species increases during the winter months. Mule deer may also use the area as part of their winter range, especially during severe winters. Black bears and mountain lions also frequent the area.

## ALTERNATIVES

One alternative (No Action Alternative) is evaluated in this EA. Under the No Action Alternative, FWP would not issue a license for the proposed Decker's Draw Alternative Livestock Operation. Therefore, no alternative livestock would be placed in the proposed fenced enclosure. Implementation of the No Action Alternative would not preclude other activities allowed under local, state, and federal laws to take place at the proposed alternative livestock site.

## AFFECTED ENVIRONMENT

The proposed Decker's Draw alternative livestock facility will consist of an enclosure of approximately 80 acres located on 95 acres of privately owned land approximately 2½ miles southwest of Kila, Montana. It is located up Jackson Draw, about ½ mile uphill from Ashley Creek and the Smith Lake Waterfowl Production Area. Slopes in the area are gentle to moderate in steepness and are primarily forested, with small, grassy openings. Soils in the area appear to be well drained, reducing run-off potential. There are no creeks or other sources of surface water within the project area. Residences in the area are scattered.

White-tailed deer and elk currently use the proposed site on a year-round basis, with use increasing during the winter months. Mule deer may also use the area for winter range, especially during severe winters. Black bears and mountain lions reside in the general area and undoubtedly frequent the project site. Gray wolves and bald eagles are Federally listed as threatened or endangered and may be transient through the area.

The majority of the proposed facility is forested, as is the surrounding area. While all noticeable trees susceptible to wind-throw have been or will be removed from the fence perimeter, hundreds of trees will remain that could strike and damage the fence during periods of high winds or major rain and snow events. During the winter of 1996-97, snow depths in the area reached 3-4 feet deep, although that winter was considered by some meteorologists as a 1-in-300-year event. Typically, winter snow depths in this area are less than 16 inches. However, blowing and drifting snow could be a concern during many of western Montana's winters.

Plum Creek Timber Company and relatively large blocks of private land (>20 acres) dominate the area. This general area has been primarily used for timber harvesting and cattle grazing in the past.

The proposed facility is located on a private road approximately 2½ miles from Kila. Houses in the area are scattered. Grazing is an historic use of the area.

Two currently monitored diseases – brucellosis and tuberculosis – are potentially transmittable between alternative livestock, cattle, horses, and wildlife. Domestic livestock occasionally use adjacent rangeland in the area. Chronic wasting disease (CWD) has been detected in alternative livestock and free-ranging deer and elk in other states or provinces. One case of CWD has been detected recently in a Montana alternative livestock facility. The CWD affected herd in Montana has been depopulated. Mandatory surveillance for CWD on all alternative livestock operations in Montana was instituted in April 1999. In addition, the State Veterinarian issued an official order on February 17, 2000, requiring a minimum of five years of CWD surveillance on all cervids (alternative livestock operations) prior to importation into Montana. The mode of transmission of CWD is unknown and there is no test for this disease in living animals. CWD has been a known wildlife disease for 20 years in Colorado and Wyoming. There is no evidence of CWD transmission to domestic livestock or humans.

## **CONSEQUENCES OF THE PROPOSED ACTION**

Only primary resources with the potential to be adversely impacted by the Proposed Action are summarized in this section. A more detailed discussion of environmental consequences is contained in *Part II* of the Draft EA.

### ***Impacts to Land, Water, and Vegetation Resources***

The proposed alternative livestock site would have only minor impacts on land and soil resources. Unprotected soil may be eroded by water if left unprotected, especially on steeper slopes. Removal of vegetation due to overuse (either overgrazing or trampling) is the primary threat to leaving the soil unprotected.

Increased runoff and erosion could occur in some areas of the ranch if the stocking rate exceeds the carrying capacity of the pasture and vegetative cover is diminished. The proposal to pasture up to 59 elk on the 80-acre site with supplemental feed available could result in maintenance of adequate vegetative cover if proper management practices are utilized. However, erosion problems could result if soil becomes exposed for an extended period of time. Alternative livestock fecal matter and nutrient-enriched water may have minor impacts on the quality of groundwater and surface water in the vicinity of the ranch, primarily during periods of snow melt and major precipitation events. Nutrients in runoff from the site could potentially enter Jackson Draw, but it is unlikely that increased nitrogen levels would be detectable in Ashley Creek.

The occupancy period for the adult elk would be on a yearlong basis. Annual forage consumption for 59 adult elk would be approximately 237,000 pounds. The proposed alternative livestock facility will not supply on a continual basis the total annual forage needs of the elk if fully stocked. Supplemental feed should be provided on a seasonal basis to help reduce elk use of native vegetation and alleviate the potential for noxious weed establishment and/or spread.

Noxious weeds such as knapweed, thistle, and mullein are present at this site and could potentially spread due to the continuous effects of grazing. Weed seeds could potentially be imported into the area with feed for the elk.

### ***Impacts to Wildlife Resources***

Establishing this facility (at full buildout) would exclude wild deer and elk from the 80 acres of habitat that is currently available to them in the area. This slight reduction in the area's carrying capacity for deer and elk would not be a noticeable reduction. While the movement patterns of individual game animals would be altered, no measureable effects on the movement of wild deer and/or elk is expected. The Proposed Action would not impact any threatened or endangered species.

The potential for water-borne disease pathogens, if present, to be transported out of the alternative livestock site is minor because surface water seldom leaves the enclosure. There is no water source present within the enclosure, and the only water leaving the site would be via surface flow during runoff periods of significant snowmelt and/or precipitation. The route of chronic wasting disease (CWD) transmission at this time is unknown; therefore, the potential for transmission by soil, water, or other media cannot be determined.

Domestic livestock currently use adjacent rangeland. There would be potential for impacts if contact between domestic livestock and captive elk resulted in the transfer of disease. There is also potential for impacts if alternative livestock carry or become infected with a contagious disease or parasite such as tuberculosis, and then come in contact (through-the-fence, nose-to-nose, nose-to-soil, or through ingress/egress) with wild deer, elk, wildlife, or domestic animals. Potential for disease transmission between domestic elk, cattle, and wildlife is mitigated below a level of significance through DoL disease testing and FWP fencing requirements. The release of a contagious disease in the wild could significantly impact more than neighboring deer or elk since they are capable of moving considerable distances on a seasonal basis. It is also possible diseases and parasites carried by wild deer or elk could be introduced to the alternative livestock.

If tuberculosis or brucellosis were present and subsequently transmitted from alternative livestock to wild elk, hunters field dressing wild elk would be subject to significant risk of infection. Veterinarians and meat cutters working with diseased alternative livestock would be at risk of becoming infected with brucellosis or tuberculosis. Risk to human health from diseased animals could be significant, but routine brucellosis and tuberculosis testing requirements for alternative livestock offer a measure of surveillance that minimizes that risk.

### ***Impacts to Land Use, Recreation, and Safety***

The proposed alternative livestock ranch would be compatible with existing agricultural land uses. The Proposed Action would result in the loss of about 80 acres of upland forest habitats. The alternative livestock site is currently used for timber harvest and grazing by cattle and big game. With respect to land use, no significant conflicts should result between operation of the alternative livestock site and the agricultural or residential areas. Potential effects of the Proposed Action on adjacent property values are difficult to evaluate because some nearby property owners may like an alternative livestock ranch, whereas others may find it undesirable. No conflicts with local covenants or neighborhood rules are currently known.

### ***Cumulative Effects***

The Proposed Action would result in impacts that are individually minor, but not cumulatively significant. Cumulative effects are described for each resource in Part II (Environmental Review) of the Draft EA.

## REQUIRED STIPULATIONS

The following stipulation is imposed by FWP for the Decker's Draw Alternative Livestock Operation.

- (1) *Monitor the perimeter fence on a regular basis, not less than weekly, such that it can be insured that fence integrity is continuously maintained. In the event of abnormal weather events (wind, snow), perimeter monitoring will be required during and immediately after such events.*

This stipulation is imposed to mitigate an inherent risk from ingress/egress, which would occur if (1) alternative livestock were diseased and (2) fence integrity resulted in ingress/egress and animal contact. Risk to livestock and wildlife from contact with alternative livestock is possible due to the site being located in an area currently utilized by domestic livestock and wild game.

## RECOMMENDED MITIGATION MEASURES

The following list of recommended mitigation measures address minor impacts identified in the Decker's Draw Alternative Livestock EA; for a complete list of all mitigation measures, see the checklist portion of the Draft EA:

- Provide supplemental feed and minerals to the elk on a seasonal basis to reduce excessive grazing on preferred pasture plants.
- Maintain a stocking rate and/or a supplemental feeding program within the alternative livestock enclosures to reduce excessive grazing on preferred forage species and changes in soil structure so that potential increases in erosion from disturbed ground do not occur. Areas with exposed soil should be revegetated promptly. It is difficult to establish a numerical "reasonable" stocking rate prior to implementation of the Proposed Action due to variable site conditions and the potential use of supplemental elk feed.
- Minimize potential water quality impacts by disposing of dead animals, excess fecal material, and waste feed at a site that is isolated from surface water and groundwater (disposal must meet county regulations for solid waste).
- Control surface water discharges from the proposed site, if they occur, by employing Best Management Practices (BMPs) where runoff might enter Jackson Draw. The BMPs may include earthen berms, vegetative buffer zones, straw bale dikes, or silt fences. The booklet "Common Sense and Water Quality, a Handbook for Livestock Producers" (Montana Department of Health and Environmental Sciences, 1994) is recommended for further mitigation measures.
- Monitor the proposed alternative livestock site for invasion of noxious weeds and treat affected areas in a timely manner by implementing a noxious weed control program.
- Store hay, feed, or salt away from exterior fences or enclosed in bear resistant containers or buildings.
- Feed captive elk at interior portions of the enclosure and not along the perimeter fence. Extra caution should be taken to limit the exposure of animal feed to bears.
- During winters of exceptional snow cover, removal of snow on either side of the enclosure fence may be required to prevent ingress and egress.

- Prevent damage to the exterior fence by moving captive bulls to an interior pasture or the handling facility if wild bull elk are observed near the exterior fence during the rut and the potential for fighting exists.
- To minimize the introduction of weeds into the area, only high quality hay or pellets are recommended. An aggressive weed monitoring and control program should also be a part of this operation and communication with the Flathead County Weed Control District should be initiated.

## ERRATA SECTION

This section of the Final EA contains specific corrections to the Draft EA that are presented as a result of recent events, public, or agency comments (see following section "Summary of Public Comments and FWP Responses"). The Final EA incorporates the Draft EA with the following corrections.

### **Modifications to Text of Draft EA**

The statement on page 17 of the Draft EA indicating that *"all alternative livestock that are imported must be from a herd that has completed a minimum of two years surveillance for CWD, with no cases of CWD in the exporting herd or in herds that the exporting herd received elk from"* is no longer true. The State Veterinarian issued an official order on February 17, 2000, requiring a minimum of five years of CWD surveillance on all cervids (alternative livestock operations) prior to importation into Montana.

Paragraph 10(b) on page 20, which states *"Placement of elk in the proposed game farm would increase the applicant's annual tax contribution to the county by several hundred dollars, depending on the number of elk at the facility, their sex and age. Most game farms in Montana to date have not cost the State a lot of money in terms of their normal operations. However, with the recent discovery of CWD on a game farm near Philipsburg, the State of Montana has spent in excess of \$50,000.00 thus far in an effort to eradicate the disease, which includes payments for the elk, testing for the disease, and incineration of the carcasses and other items. Additional costs are expected before the land is deemed safe for other uses."* Has been modified to read as follows: "Placement of elk in the proposed game farm would increase the applicant's annual tax contribution to the county by several hundred dollars, depending on the number of elk at the facility, their sex and age."

The required stipulation that the perimeter fence will be monitored on a daily basis has been changed to read as written above.

## SUMMARY OF PUBLIC COMMENTS AND FWP RESPONSES

Public comments for the Decker's Draw Alternative Livestock Operation Draft EA were accepted from February 1, 2000, through February 21, 2000. FWP received 16 written public comment submittals during the comment period. Minutes transcribed during the public meeting held on February 18, 2000, also contain comments verbalized by 19 members of the public during the meeting, some of which also submitted written comments. Of the written comments, 5 were in favor of game farms and 11 were opposed. Of the comments presented at the public meeting, 17 were in favor and 2 were opposed. Substantive issues and questions raised by members of the public during the comment period are summarized below, along with FWP and DoL responses. Public comments are considered substantive if they relate to inadequacies or inaccuracies in the analysis or methodologies used in the Draft EA, or identify new impacts or recommend reasonable new alternatives or mitigation measures, or involve disagreements or interpretations of impact significance. Comments, which express personal preferences or opinions on the proposal rather than on the evaluation itself, are not specifically addressed.

## Category 1 – Disease and Risk

**Issue 1:** Game farms are reservoirs for disease, including CWD, tuberculosis, brucellosis, and cryptosporidiosis. Native ungulates and domestic livestock are threatened. The risk to Montana's \$1.7 billion hunting industry for the sake of the \$13 million alternative livestock industry is too great. We don't know enough about transmission and incubation of CWD to determine risk, and until we do we should be conservative and not allow new alternative livestock operations. Because we do not know enough about CWD and there is no live animal test at present, and in light of the Kessler incident, how can the statutes and regulations that govern the alternative livestock industry presume that it is appropriate to permit new operations? The state should institute a moratorium on new game farms until such a time as there is a live animal test for CWD and the state of our knowledge is such that we can eliminate the risk to Montana's native wildlife due to the alternative livestock program.

**Response 1:** Comment noted. Potential disease transmission impacts are described on pages 15-17 of the Draft EA and pages 5-6 of this Final EA. The potential for disease transmission is addressed by DoL's disease testing and surveillance requirements, by maintaining the integrity of the facility's exterior fencing, and by implementing the stipulations and mitigation measures in the EA. Both FWP and DoL are concerned about the possible spread of disease among animals, and will require additional monitoring if there is reason to suspect its presence. Currently, no CWD has been detected on alternative livestock facilities in the state of Montana other than on the Kesler facility, where all animals were killed and tested. FWP and DoL periodically inspect alternative livestock operations to ensure continued compliance with the license and regulations. It is true that the transmission mechanism of CWD is unknown. Disease testing and surveillance requirements by DoL minimize the potential for disease at an alternative livestock site (see ARM 32.4.1301-1320 for surveillance requirements and importation restrictions on alternative livestock with respect to CWD).

*Note: The State believes that a more accurate representation of the relative values associated with Montana's wildlife and with the alternative livestock industry is approximately \$450,000,000 and \$20,000,000 respectively.*

**Issue 2:** The state should require testing of all dead deer and elk that come into the state.

**Response 2:** Comment noted.

**Issue 3:** There appears to be a disparity between the state's stance on brucellosis (zero tolerance) and CWD. Please explain.

**Response 3:** The DoL, by law, is required to take measures necessary to prevent the introduction of disease. If this comment is in reference to brucellosis exposed and/or infected bison entering Montana from Yellowstone National Park, the actions of the DoL are defined in MCA 81-2-120 and the Interim Bison Management Plan.

**Issue 4:** Why is the red deer genetics issue addressed in this Draft EA? Isn't it true that this is not an issue with respect to this proposal?

**Response 4:** While it is true that prior to entering the State, domestic elk must test negative for the red deer gene, it is not necessarily true that all domestic elk currently in the state are on record as having been tested and free of red deer genes. The ongoing program of testing for elk-red deer hybrids as developed by FWP and DoL will continue until 2001 at which time the eradication of elk-red deer hybrids on alternative livestock facilities in the state of Montana will be evaluated as to its success. Until such a time as that is true, the issue will need to be discussed in the context of proposals such as this.



## **Category 2 – Regulatory Authority and Funding**

**Issue 1:** One agency should be in charge of permitting, monitoring, and enforcing the alternative livestock program.

**Response 1:** Responsibilities for administering the alternative livestock program are specified in Montana statute 87-4-408 and have been designated as such by the Montana Legislature. Jurisdiction for the responsibilities as assigned to DoL and FWP have been assigned based upon the expertise which each of the two agencies have in the aspects of their responsibilities.

**Issue 2:** There should be an explanation in the EA that discloses how the regulation of the alternative livestock industry is funded and managed. The explanation should include funding sources and pathways for activities involved with this regulation, including enforcement, monitoring, and emergency responses.

**Response 2:** Comment noted. This discussion is outside the scope of this EA and will be more appropriately discussed at the programmatic EIS level, of which an effort is underway.

## **Category 3 – Ethical Traditions/Traditional Practices**

**Issue 1:** Elk ranching is a way to keep Montana lands in production and to keep Montanans on the land. It follows the state's agricultural/rural tradition.

**Response 1:** Comment noted.

**Issue 2:** Elk are wild animals and to fence them in is not ethically right and is not in tradition with Montana's wildlife heritage.

**Response 2:** Comment noted.

**Issue 3:** Elk on ranches are domestic animals that are privately owned. They are not penned up wild animals.

**Response 3:** Comment noted.

## **Category 4 – Impacts**

**Issue 1:** Ground disturbance will result from penning animals up. Potential impacts to water quality should be considered and disclosed, including discussions on erosion, weeds, and bull trout that could potentially occur downstream.

**Response 1:** As discussed on page 6 and 8 of the Draft EA, soils appear to be well drained and there are no creeks or other sources of surface water within the project area. It is doubtful that an increase in nitrogen from the area would be detectable in Ashley Creek, the nearest downstream water. The recommended mitigations section found on page 7 of this Final EA includes measures that will reduce or eliminate potential impacts relating to soil disturbance, weed infestation, and ground disturbance, including supplemental feeding, weed control, and BMPs.

**Issue 2:** A disclosure of No Impact to the state or local tax base is not reasonable given that some money will be spent locally by the rancher during the operation of the ranch.

**Response 2:** On page 20 of the Draft EA it states that "placement of the elk in the proposed facility would increase the applicant's annual tax contribution to the county by several hundred dollars, depending on the number of elk at the facility, their sex, and their age."

**Issue 3:** Cumulative impacts to fish and wildlife resources should be further discussed, particularly with respect to the incremental removal of habitat by projects like this.

**Response 3:** As disclosed on page 12 of the Draft EA, the proportion of the area's available habitat that will be excluded by this proposed facility is less than 1% of the acres currently used by wildlife in the area. The private land proposed for this facility is not designated as critical or essential habitat for wildlife in the area.

**Issue 4:** Cumulative impacts should be further discussed with respect to land uses in the area and the relationship for example, to local covenants that might preclude this project.

**Response 4:** Page 14 of the Draft EA discloses under 7 (c) that there is no "conflict with any existing land use whose presence would constrain or potentially prohibit the proposed action".

## **Category 5 – MEPA Process**

**Issue 1:** The proposed operation is not described in enough detail. Statements like "if elk numbers are maintained" and "if supplemental feeding is required" should be further researched and discussed more definitively.

**Response 1:** The Draft EA discloses projected and potential impacts based on the best information available. The analysis in this case took into account the "worst case" situation and disclosed potential impacts, including those associated with the maximum number of elk (59) and with situations where supplemental feeding will occur.

**Issue 2:** More documentation (literature citations) is needed with respect to cutthroat trout, historical resources, federally listed plants, and wild deer crawling under fences using coyote holes.

**Response 2:** The intent of an EA is to disclose potential impacts in an analytical rather than an encyclopedic manner, which are understandable to a reader. Therefore reference lists etc., have been left out of the document.

## **Category 6 – Mitigation/Monitoring**

**Issue 1:** Mitigations should be further clarified as to whether they are mandatory and enforceable or simply recommendations. This would give the reader a measure of the likelihood of a measure being implemented or carried out. (examples include type of supplemental feed, fence monitoring, weed monitoring, removal of excess fecal matter).

**Response 1:** Required stipulations are those measures or activities that are required so as to reduce or eliminate the potential for significant impacts as determined by the analysis. Where impacts have been determined to be minor or minimal, recommended mitigations can be included in the EA that if implemented, could further reduce the extent of the minor impact. There is no statutory authority to require implementation of mitigations to impacts that are not significant.

**Issue 2:** How will monitoring for compliance be carried out?

**Response 2:** Monitoring will occur in a variety of ways, including: during annual inspections by department personnel, submission of required reports and forms (death, sale, removal of an animal(s), etc. Statutes and regulations are in place and being implemented Statewide with respect to monitoring of alternative livestock facilities and activities.

**Issue 3:** Fencing requirements should be such that the risk of escape (or ingress) is zero. This could include double fencing.

**Response 3:** To obtain "zero risk" in any situation is difficult. New fencing requirements formulated under the Negotiated Rulemaking Process for alternative livestock facilities, which went into effect in January of 1999, are intended to decrease probability of ingress/egress issues at alternative livestock facilities. To date, there have been no reported incidents of ingress or egress under the new requirements.

**Issue 4:** Residual, unmitigable impacts/risks should be discussed. The potential for nose to nose contact is not eliminated with any mitigation. If nose to nose contact is truly a risk then it should be addressed appropriately.

**Response 4:** As discussed in section 10 of the Draft EA, nose to nose contact is a known transmission vector for tuberculosis. It is not currently known if nose to nose contact is a transmission pathway for CWD. Tuberculosis testing is currently a requirement for all domestic elk in Montana.

**Issue 5:** Mitigations should be documented as to their anticipated effectiveness. Is it really more protection to monitor a fence daily rather than weekly?

**Response 5:** Each mitigation measure or stipulation is presented as a means to reduce the potential or occurrence of environmental impacts. Each is anticipated to be effective.

**Issue 6:** When a reliable test for CWD is available, testing should be required within a designated period of time and should be paid for by the permittees.

**Response 6:** Comment noted.

**Issue 7:** Mitigations should correspond to well defined risks. Risks should also be documented with pertinent literature citations.

**Response 7:** The MEPA process requires that proposed mitigations correspond to the potential for or the risk of an impact. This Draft EA complies with MEPA direction.

## **Category 7 – Private Property Rights**

**Issue 1:** Private property rights dictate that landowners can raise alternative livestock in accordance with statutory requirements and administrative rules. When assessing an application, FWP and DoL must confine themselves to areas of authority set forth in statutes, rules, and the Montana Environmental Policy Act.

**Response 1:** Comment noted.

## **CONCLUSION OF THE EA**

The Draft EA, as modified herein, and this Final EA are approved as the Final EA for the Decker's Draw Alternative Livestock Operation. The preferred alternative is the Proposed Action, modified with the stipulation listed in this Final EA. Based on this review, it is determined that the Proposed Action with the required stipulation would not have a significant impact on the environment and that an EIS will not be required.

## **ANALYSIS OF IMPACT ON PRIVATE PROPERTY**

Montana alternative livestock statutes (87-4-476, MCA) require that licenses may be denied or issued with stipulations to prevent unacceptable threat of escape of alternative livestock and to prevent a significant threat to the safety of the general public and surrounding landowners and by the shooting of alternative livestock animals. MEPA requires FWP to identify and analyze environmental impacts of the Proposed Action and potential mitigation measures. MEPA, as revised by Senate Bill 231 of 1995, also requires agencies to evaluate the impact on private property of regulatory actions, such as denial of a permit or establishment of permit conditions (75-1-201, MCA). The Environmental Quality Council (EQC) has established procedural guidelines to implement these requirements. The analysis provided in the Draft EA was prepared in accordance with implementation guidance issued by the EQC.

In addition, the Private Property Assessment Act (2-10-101, MCA, et seq.) requires agencies to determine whether proposed actions by the State of Montana have "taking or damaging implications", such as to constitute a deprivation of private property in violation of the United States or Montana constitutions and, if so, to perform an impact assessment to determine the likelihood that a state or federal court would hold that the action is a taking or damaging, to review alternatives, and to determine the estimated cost of compensation. In accordance with the Act, the attorney general has prepared guidelines, including a checklist, to assist agencies in identifying and evaluating actions with taking or damaging implications.

The Draft EA contains FWP's completed checklist with respect to the stipulations recommended in the preferred alternative and has found that the preferred alternative does not have taking or damaging implications and that an impact assessment is not required.

## **PERSONS RESPONSIBLE FOR PREPARING THE EA AND RESPONSES TO PUBLIC COMMENTS**

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